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9 UNITED STATES DISTRICT COURT
10 WESTERN DISTRICT OF WASHINGTON
11 AT TACOMA

12 RICARDO LEE AGUILAR,

13 Plaintiff,

14 v.

15 CORRECTIONAL OFFICER ERIC
16 ROBERTSON, et al.,

17 Defendants.
18

Case No. C09-5532 RBL/JRC

REPORT AND RECOMMENDATION

NOTED FOR:

August 27, 2010

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20 This 42 U.S.C. § 1983 Civil Rights Action has been referred to the undersigned
21 Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and (B) and Local
22 Magistrate Judges' Rules MJR 1, MJR 3, and MJR 4.

23 Plaintiff alleges a ring that belongs to him was lost or stolen by prison property
24 officers. Defendants move to dismiss the action for failure to state a claim because the
25 state provides for due process in a state forum. The motion is filed as a Fed. R. Civ. P. 12
26 (c) motion for judgment on the pleadings (Dkt. # 36). The court has reviewed the file

REPORT AND RECOMMENDATION- 1

1 including the motion and response. This action fails to state a claim because the state
2 provides due process through a state tort claims process. The court recommends the
3 action be dismissed and that the dismissal count as a strike pursuant to 28 U.S.C. §1915
4 (g).

5 STANDARD OF REVIEW

6 Judgment on the pleadings is proper under Fed. R. Civ. P. 12(c) when, taking all
7 the allegations in the pleadings as true, the moving party is entitled to judgment as a
8 matter of law. Honey v. Distelrath, 195 F.3d 531, 532 (9th Cir. 1999); Nelson v. City of
9 Irvine, 143 F.3d 1196, 1200 (9th Cir. 1998).

10 DISCUSSION

11 Defendants argue:

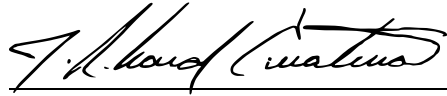
12 [The] unauthorized deprivation of a prisoner's property by a state official or
13 employee does not state a claim for a violation of due process in a § 1983 action
14 so long as the state provides an adequate post-deprivation remedy for the loss.
15 *Parratt v. Taylor*, 451 U.S. 527, 101 S. Ct. 1908 (1981) (negligent loss of
16 property or injury to property by state official does not violate due process so long
17 as the state provides a meaningful post-deprivation remedy for the loss or injury);
18 *Hudson v. Palmer*, 468 U.S. 517, 104 S. Ct. 3194 (1984) (unauthorized, intentional
19 loss of property or injury to property by state official does not violate due process so
20 long as the state provides a meaningful post-deprivation remedy for the loss or
21 injury).

22 Plaintiff's claim concerning the loss of his personal property falls squarely under
23 *Parratt, supra* and *Hudson, supra*. Plaintiff has alleged an unauthorized and random
24 deprivation of his property by state prison officials. Plaintiff's due process claim is
25 therefore foreclosed if he has an adequate post-deprivation remedy under state law.
26 *Id.* Plaintiff has an adequate remedy under state law.

Under Washington law, Plaintiff may file a tort claim and a civil action against the
State of Washington for the unlawful loss or destruction of his personal property.
RCW 72.02.045 (state and/or state officials liable for the negligent or intentional loss
of inmate property); RCW 4.92.090.-.100 (state liable for the tortious conduct of state
officials and employees); *See also Jeffries v. Reed*, 631 F. Supp. 1212, 1216 (E.D.
Wa. 1986) (State of Washington provides a meaningful remedy for the loss of an
inmate's property by state officials). Plaintiff has availed himself of this state law
remedy as he concedes that he filed a tort claim with the state over his lost property.

1 limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on
2 August 6, 2010, as noted in the caption.

3 Dated this 3rd day of August, 2010.

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6 J. Richard Creatura
7 United States Magistrate Judge
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